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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/718,929

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Karl Guthrie

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Portland Intellectual Property, LLC
900 SW Fifth Avenue, Suite 1820
Portland, OR 97204

EXAMINER

LUGO, CARLOS

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

05/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/718,929	Applicant(s) GUTHRIE ET AL.	
	Examiner Carlos Lugo	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-61 and 63-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-61 and 63-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to applicant's RCE filed on April 28, 2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 34-45, 58, 59 and 63-66 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,702,218 to Onofrio in view of US Pat No 3,332,118 to Temple et al (Temple) and further in view of US Pat No 4,615,514 to Hamlin.

Regarding claims 34 and 63, Onofrio discloses a toggle bolt comprising a hole plug (16') and a toggle bar (18) connected to a member (12).

However, Onofrio fails to disclose that the toggle bolt comprises a flexible cable that, in combination with the toggle bar, it would provide fall protection. Onofrio discloses that the toggle bar is capable of hanging loads from the ceiling when they are placed from the member (Col. 1 Lines 25-40).

Temple teaches that it is well known in the art to provide a flexible member that could be a cable (Figures 1 and 2) and that would provide fall protection to a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the member described by Onofrio as a flexible cable, as taught by Temple, in order to, first, provide a simple way to operate the toggle bar,

and second, in order to provide a mechanism that will be simple in construction and in operation and still can hold loads from it (for example, a person).

Further, Onofrio fails to disclose that an end of the toggle bar is adapted for locking engagement with the hole plug in the closed position. Onofrio illustrates that the ends of the toggle bar are capable to rest against the cone surface of the hole plug (16') in the closed position.

Hamlin teaches that it is well known in the art to provide a plug (36) that includes a recess that is capable of receiving and holding a toggle bar in a closed position.

It would be obvious to one having ordinary skill in the art at the time the invention was made to provide the plug member described by Onofrio with a recess that can be adapted to receive the toggle bar, as taught by Hamlin, in order to hold the toggle bar in the closed position so as to introduce the bar through the opening of the member.

As to claim 35, Onofrio, as modified by Hamlin, teaches that the end of the toggle bar is adapted for releasable retention in a recess of the hole plug to provide the locking engagement.

As to claim 36, Onofrio, as modified by Temple and Hamlin, teaches that the cable extends through a substantially centrally disposed aperture through the hole plug, and wherein the end of the toggle bar is tapered to provide for the retention.

As to claims 37-39 and 64, Onofrio discloses that the toggle bolt further comprises a plug biasing compression spring (26) for biasing the hole plug toward the toggle bar.

As to claims 40-45, 65 and 66, Onofrio fails to disclose that the toggle bolt further comprises a toggle bar pivot control member for manipulation of the toggle bar.

Hamlin teaches that it is well known in the art to provide a toggle pivot control member (25 or 27) for manipulation of a toggle bar (20 or 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the toggle bolt described by Onofrio with a control member, as taught by Hamlin, in order to be able to move the toggle bar.

As to claims 58 and 59, Onofrio, as modified by Temple and Hamlin, teaches a method for anchoring to an object having a hole therethrough leading to an opening space comprising the steps of providing a safety toggle bolt having a handle member and a toggle bar pivotally connected to the handle member; locking the toggle bar in a closed position; inserting the safety toggle bolt through the hole; and pushing on the handle member so as to unlock the toggle bar from the closed position and releasing the handle member after pushing the handle member so that the toggle bar is automatically pulled toward the hole plug to adjust the bolt.

4. **Claims 46-57 and 67-70 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,702,218 to Onofrio in view of US Pat No 3,332,118 to Temple et al (Temple) and further in view of US Pat No 4,615,514 to Hamlin as applied to claims 34-45, and further in view of US Pat No 5,209,621 to Burbidge.

Onofrio, as modified by Temple and Hamlin, fails to disclose that the toggle bar further comprises a toggle bar return spring attached to the toggle bar.

Burbidge teaches that it is well known in the art to have a toggle bolt assembly comprising a toggle bar (18) that has a toggle bar returns spring (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Onofrio's device a toggle return spring, as taught by Burbidge, in order to bias the toggle bar to the open position after been inserted through the opening.

5. **Claim 60 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,702,218 to Onofrio in view of US Pat No 3,332,118 to Temple et al (Temple) and further in view of US Pat No 4,615,514 to Hamlin as applied to claims 34 and 40, and further in view of US Pat No 3,288,014 to Mortensen.

Onofrio, as modified by Temple and Hamlin, fails to disclose that the flexible cable and the toggle bar pivot control member extend through respective apertures at the hole plug.

Mortensen teaches that it is well known in the art to provide a plug (10) that includes apertures (Figures 5 and 6) so that a member (38) and a pivot control member (26) can extend in a respective aperture.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hole plug described by Onofrio, as modified by Temple and Hamlin, with respective apertures for the members that extends through the plug, as taught by Mortensen, in order to separate the members so as to prevent any rupture or damage between the members that pass through the plug.

6. **Claim 61 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,702,218 to Onofrio in view of US Pat No 3,332,118 to Temple et al (Temple), in view of US Pat No 4,615,514 to Hamlin and in view of US Pat No 3,288,014 to Mortensen as applied to claim 60, and further in view of US Pat No 5,209,621 to Burbidge.

Onofrio, as modified by Temple, Hamlin and Mortensen, fails to disclose that the toggle bar further comprises a toggle bar return spring attached to the toggle bar.

Burbidge teaches that it is well known in the art to have a toggle bolt assembly comprising a toggle bar (18) that has a toggle bar returns spring (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Onofrio's device a toggle return spring, as taught by Burbidge, in order to bias the toggle bar to the open position after been inserted through the opening.

7. **Claims 34-45, 58, 59 and 63-66 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio and further in view of US Pat No 4,615,514 to Hamlin.

Regarding claims 34 and 63, Temple discloses a bolt comprising a flexible cable (1) and a bar (3) connected to the cable. The bolt is capable of holding an user to prevent the user from falling.

However, Temple fails to disclose that the bolt further comprises a hole plug and that an end of the toggle bar is adapted for locking engagement with the hole plug in the closed position.

Onofrio teaches that it is well known in the art to provide a similar device that includes a rod connected to a bar, and a hole plug (16) that is received in a hole of a structure capable of centering the device in place. Onofrio illustrates that the ends of the toggle bar are capable to rest against the cone surface of the hole plug (16') in the closed position.

Hamlin teaches that it is well known in the art to provide a plug (36) that includes a recess that is capable of receiving and holding a toggle bar in a closed position.

It would have been obvious to one having ordinary skill in the art to provide the device described by Temple with a hole plug, as taught by Onofrio and Hamlin, in order to hold the bar in a closed position and to center the device when is placed with respect to the structure.

As to claim 35, Temple, as modified by Onofrio and Hamlin, teaches that the end of the bar is adapted for releasable retention in a recess of the hole plug to provide the locking engagement.

As to claim 36, Temple, as modified by Onofrio and Hamlin, teaches that the cable extends through a substantially centrally disposed aperture through the hole plug, and wherein the end of the toggle bar is tapered to provide for the retention.

As to claims 37-39 and 64, Temple, as modified by Onofrio and Hamlin, teaches that the toggle bolt further comprises a plug biasing compression spring (26) for biasing the hole plug toward the toggle bar.

As to claims 40-45, 65 and 66, Temple discloses that the toggle bolt further comprises a bar pivot control member (10) for manipulation of the toggle bar.

Also, Hamlin teaches that it is well known in the art to provide a toggle pivot control member (25 or 27) for manipulation of a toggle bar (20 or 22).

As to claims 58 and 59, Temple, as modified by Onofrio and Hamlin, teaches a method for anchoring to an object having a hole therethrough leading to an opening space comprising the steps of providing a safety toggle bolt having a handle member and a toggle bar pivotally connected to the handle member; locking the toggle bar in a closed position; inserting the safety toggle bolt through the hole; and pushing on the handle member so as to unlock the toggle bar from the closed position and releasing the handle member after pushing the handle member so that the toggle bar is automatically pulled toward the hole plug to adjust the bolt.

8. **Claims 46-57 and 67-70 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio and further in view of US Pat No 4,615,514 to Hamlin as applied to claims 34-45, and further in view of US Pat No 5,209,621 to Burbidge.

Temple, as modified by Onofrio and Hamlin, fails to disclose that the toggle bar further comprises a toggle bar return spring attached to the toggle bar.

Burbidge teaches that it is well known in the art to have a toggle bolt assembly comprising a toggle bar (18) that has a toggle bar return spring (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Temple's device a toggle return spring, as taught by Burbidge, in order to bias the toggle bar to the open position after being inserted through the opening.

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9. **Claim 60 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio and further in view of US Pat No 4,615,514 to Hamlin as applied to claims 34 and 40, and further in view of US Pat No 3,288,014 to Mortensen.

Temple, as modified by Onofrio and Hamlin, fails to disclose that the flexible cable and the toggle bar pivot control member extend through respective apertures at the hole plug.

Mortensen teaches that it is well known in the art to provide a plug (10) that includes apertures (Figures 5 and 6) so that a member (38) and a pivot control member (26) can extend in a respective aperture.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hole plug described by Temple, as modified by Onofrio and Hamlin, with respective apertures for the members that extends through the plug, as taught by Mortensen, in order to separate the members so as to prevent any rupture or damage between the members that pass through the plug.

10. **Claim 61 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio and further in view of US Pat No 4,615,514 to Hamlin and in view of US Pat No 3,288,014 to Mortensen as applied to claim 60, and further in view of US Pat No 5,209,621 to Burbidge.

Temple, as modified by Onofrio and Hamlin and Mortensen, fails to disclose that the toggle bar further comprises a toggle bar return spring attached to the toggle bar.

Burbidge teaches that it is well known in the art to have a toggle bolt assembly comprising a toggle bar (18) that has a toggle bar returns spring (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Temple's device a toggle return spring, as taught by Burbidge, in order to bias the toggle bar to the open position after been inserted through the opening

Response to Arguments

11. Applicant's arguments filed on April 28, 2008 have been fully considered but they are not persuasive.

First, the claim language to recite the provision of fall protection was suggested by the examiner in view of the applicant's arguments in the interview that took place on October 31, 2007 with Mr. Janke, in order to clearly claim the invention. However, the examiner never mentions that this language would put the application in allowance condition. The examiner clearly points out that a different interpretation and/or rejection can be made in the future (see interview summary record filed on November 5, 2007).

At the instant, Onofrio's device is capable of holding certain load from it when is connected to the ceiling. In combination with Temple, the device is then capable of holding a person.

As to the arguments of Temple's device is at an angle, Temple is only used to demonstrate that the use of a cable is well known in the art. Also, one of ordinary skill in the art would notice that the device would not be always at the angle position

shown in Figure 2. When load is placed the device would be moved more to the center. Therefore, the argument is not persuasive.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 571-272-7058. The examiner can normally be reached on 10-7pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carlos Lugo/
Primary Examiner
Art Unit 3673

May 13, 2008.